

REMARKS

Reconsideration of this application is respectfully requested in view of the foregoing amendment and the following remarks.

Claims 1, 2 and 4-29 were pending in this application. No claims are amended, canceled, or added by this Response. Accordingly, claims 1, 2, and 4-29 will remain pending.

In the Office Action mailed January 28, 2008, claims 1, 2 and 4-29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2003/0035004 to Dove et al. ("Dove"), U.S. Publication No. 2002/0196283 to Petruk et al. ("Petruk") and an article titled "Integration of the Rheometer into Today's Formulation Laboratories," by A. Franck, published June, 2002 ("Franck"). To the extent that these rejections may still be applied to the claims currently pending in this application, they are respectfully traversed.

Applicants greatly appreciate the courtesies extended by Examiner Vu during the telephonic interview of July 28, 2008, and her fair reconsideration of the declaration filed in this application. In the interview, Applicants submitted that the Examiner's basis for disregarding the Declaration of John Berting submitted under Rule 132 was improper since rule 132 does not require that all named inventors sign the declaration. Examiner Vu agreed to discuss the issue with a quality assurance specialist. In a subsequent telephonic interview held on August 5, 2008, Examiner Vu informed Applicants that the quality assurance specialist agreed with Applicants' position that Rule 132 declarations do not require the signature of each named inventor. The Examiner indicated that she would accept the declaration and reconsider the application. Applicants again note their appreciation for the Examiner's efforts and fairness in the examination of this application.

Applicants respectfully submit that the rejections under § 103 must be withdrawn since the Franck article describes the inventors' own work and was published less than one year prior to the effective filing date of the present application. The present claims are fully supported under 35 U.S.C. § 112 by Provisional Patent Application No. 60/454,346 and are therefore fully entitled to claim the benefit of the filing date of the provisional application. The declaration of named inventor John P. Berting under 37 C.F.R. § 1.132 was submitted on April 28, 2008, and is an unequivocal statement showing that the Franck article describes the inventors' own work.

As stated in the Declaration, the Franck article describes products that are the work of the present inventors. All of the inventors and the author of the article were, at the time the article was published, employed by Rheometric Scientific, Inc. ("Rheometric"), the company that is described as the source of the described products. In early 2003, the assignee of the present application, Waters Corporation ("Waters") acquired Rheometric along with the rights to the products described in the Franck article and which is the subject of the present invention.

Accordingly, since the Franck article describes the Applicants' own work and was published in June 2002, less than one year prior to the effective filing date of March 14, 2003, the Franck article does not qualify as prior art and cannot be used in rejections against the currently pending claims. *See* MPEP §§ 716.10, 2136.05. For at least this reason, all pending claims are allowable.

As to the Examiner's previous contention (now withdrawn via telephonic interview), Applicants note that Rule 132 does not require that declarations submitted pursuant thereto be signed by all inventors, while Rule 131 clearly does by its own language. Accordingly, the Declaration of John P. Berting should be considered and given weight sufficient to disqualify the Franck article as prior art.

The disqualification of the Franck reference notwithstanding, Dove and Petruk fail to disclose, teach, or suggest the claimed invention. Neither Dove nor Petruk mention the applicability of the systems for controlling the operation of a rheometer and for configuring a rheometer as claimed. Further, it would not be obvious to use the combination of Dove and Petruk to control the operation of a rheometer.

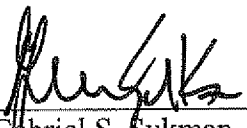
In view of the foregoing, all of the claims pending in this case are believed to be in condition for allowance. Should the Examiner have any questions or determine that any further action is desirable to place this application in condition for issue, the Examiner is encouraged to telephone Applicants' undersigned representative at the number listed below.

PAUL HASTINGS JANOFSKY & WALKER LLP
875 15th Street, N.W.
Washington, DC 20005
Tel: 202-551-1700

Respectfully submitted,

GREHLINGER ET AL.

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By: 
Gabriel S. Sukman
Registration No. 60,537

GSS

Customer No. 36183